

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Mouji Lal, since deceased (now represented by Tarini Prasad), and others v. Musammât Chandrabati Kumari; and of Mouji Lal, since deceased (now represented by Tarini Prasad) and another v. Musammât Chandrabati Kumari and another, from the High Court of Judicature at Fort William in Bengal; delivered the 18th May 1911.

PRESENT AT THE HEARING :

LORD ATKINSON.

LORD ROBSON.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[DELIVERED BY SIR ARTHUR WILSON.]

This is an Appeal against two Decrees of the Calcutta High Court dated the 11th April 1905, which reversed certain Decrees of the District Judge of Bhagulpur.

The whole proceedings arise out of some conflicting applications for the grant of letters of administration to the estate of one Ishri Pershad, who died on the 31st July 1902. In the present Appeal the only claims in question are those of the Respondent Chandrabati, alleged to be a daughter of the deceased, and that of the Appellants, who base their claim on their position as somewhat distant agnates. It is admitted that the agnates are entitled if Chandrabati

is not. The question therefore is, whether Chandrabati and a sister of hers, who is not a party to this Appeal, are daughters of Ishri Pershad, and that again depends upon whether he was married to their mother Girjabati.

On that question the Courts in India have differed, the District Judge deciding against the marriage, and the High Court in favour of it.

Their Lordships are of opinion that the view taken by the learned Judges of the High Court is correct.

In the Judgment of Pargiter, J., it is clearly and concisely shown that from the time of the alleged marriage Ishri Pershad and Girjabati were recognised by all persons concerned, as man and wife, and so described in important documents and on important occasions. Their daughters were respectably married as would be natural in the case of legitimate children; and these facts following upon a ceremony of marriage which undoubtedly took place, though its validity is attacked, afford an extremely strong presumption in favour of the validity of the marriage and the legitimacy of its offspring.

On two grounds it is sought to impugn the efficacy of the marriage. It is said first, that the alleged husband was at the time completely insane, so much so as to be incompetent to enter into a marriage.

Their Lordships agree with the learned Judges of the High Court in thinking that, to put it at the highest, the objection to a marriage on the ground of mental incapacity must depend on a question of degree, and that in the present case the evidence of mental infirmity is wholly insufficient to establish such a degree of that defect as to rebut the extremely strong presumption in favour of the validity of marriage.

The second ground of attack upon the marriage rested upon the allegation that the forms and ceremonies necessary to constitute a valid marriage had not been gone through on the occasion in question.

On this point also the opinion of the learned Judges of the High Court was in favour of the marriage, and their Lordships think rightly. To such matters of form and ceremony the established presumption in favour of marriage undoubtedly applies.

For these reasons their Lordships will humbly advise His Majesty that this Appeal should be dismissed.

The Appellants will pay the costs of the Respondent Chandrabati, who alone appeared in the Appeal.

In the Privy Council.

MOUJI LAL, since deceased (now represented by Tarini Prasad), AND OTHERS

v.

MUSAMMAT CHANDRABATI KUMARI;

AND OF

MOUJI LAL, since deceased (now represented by Tarini Prasad), AND ANOTHER

v.

MUSAMMAT CHANDRABATI KUMARI
AND ANOTHER.

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